



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

SEP 25 2014

REPLY TO THE ATTENTION OF:

WN-16J

Phil Argiroff, Chief  
Permits Section  
Water Resources Division  
Michigan Department of Environmental Quality  
P.O. Box 30273  
Lansing, Michigan 48909-7741

Re: U.S. Environmental Protection Agency Review of NPDES Permit MIG490000  
Draft General Permit for Discharges of Sand, Gravel, and Clay Mining Wastewater

Dear Mr. Argiroff:

The U.S. Environmental Protection Agency has reviewed the subject National Pollutant Discharge Elimination System Permit, which was public noticed August 22, 2014. EPA had communicated comments on the draft permit to MDEQ staff via email and in a conference call. MDEQ agreed to make changes to the permit based on the communications with EPA. The changes MDEQ commits to were communicated in a September 23, 2014 email to EPA (Enclosure A). Based on our review of the draft permit, and taking into account the changes MDEQ has agreed to make to the permit, EPA would not object to issuance of this permit. However, our position could change if any of the following occurs:

- a. Prior to the actual date of issuance of the permit, an effluent guideline or standard is promulgated which is applicable to the permit and which would require revision or modification of a limitation or condition set forth in the draft permit;
- b. A variance is granted and the permit is modified to incorporate the results of that variance;
- c. There are additional revisions to be incorporated into the permit which have not been agreed to by EPA; or
- d. EPA learns of new information, including as the result of public comments, which causes EPA to reconsider its position.

Subject to the above conditions, the permit may be issued in accordance with the NPDES program Memorandum of Agreement and pursuant to the Clean Water Act.

Although we currently do not intend to object to the issuance of this permit, EPA requests that you consider and address the comments provided in Enclosure B, which would strengthen or clarify certain permit provisions.

When the permit is reissued please forward one copy (searchable ".pdf" format) and any significant comments received during any public notice period to [r5npdes@epa.gov](mailto:r5npdes@epa.gov). Please include the NPDES permit number and the permit name in the message subject line.

Thank you for your cooperation during the review process. If you have any questions related to EPA's review of this permit, please contact Bob Newport. Bob can be reached by telephone at (312) 886-1513 or by e-mail at [newport.bob@epa.gov](mailto:newport.bob@epa.gov).

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin M. Pierard", with a stylized flourish at the end.

Kevin M. Pierard, Chief  
NPDES Programs Branch

Enclosure

cc: Maureen Nelson, Water Resources Division, MDEQ

Enclosure A  
September 23, 2014 Email from MDEQ Regarding Permit Changes

**From:** Nelson, Maureen (DEQ) [mailto:NelsonM2@michigan.gov]  
**Sent:** Tuesday, September 23, 2014 12:09 PM  
**To:** Newport, Robert; Kuefler, Patrick  
**Cc:** Ireland, Scott; Argiroff, Phil (DEQ); Myers, Tiffany (DEQ); Alexander, Christine (DEQ)  
**Subject:** RE: Michigan DEQ Draft Sand, Gravel, and Clay Mining General Permit - Draft Comment Letter from EPA

Pat and Bob,

Re: Michigan Department of Environmental Quality Response to U.S. Environmental Protection Agency Review of NPDES Draft Sand, Gravel, and Clay Mining General Permit, Permit Number MIG490000

On September 17, 2014, Robert Newport and Patrick Kuefler participated in a conference call with Phil Argiroff, Christine Alexander, Tiffany Myers, and Maureen Nelson from the Michigan Department of Environmental Quality to discuss what would become General Objections to our draft General Permit, unless adequate assurances or other revisions were made. Below is a summary of the conversation between U.S. EPA and MDEQ with the intent to move forward with a No Objection Letter.

1. The U.S. EPA expressed concern over the characterization of the effluent for the facilities covered under this General Permit. MDEQ requires new applicants to complete a full NPDES application. The permit application appendix instructs the applicant on the required sampling to submit with the application for each individual industry and operation. Based on the Region's comment, the MDEQ will revise the permit application and appendix this fall. MDEQ will include in the updated appendix the requirement to submit data on the Michigan 10 Metals (the specific metals are Arsenic, Barium, Cadmium, Chromium, Copper, Lead, Mercury, Selenium, Silver, Zinc) and hardness. Total Dissolved Solids (TDS) reporting is now required in the General Permit. For existing permittees, over the next couple of years, MDEQ will sample for the Michigan 10 Metals and hardness at three facilities, including one in each of the Upper Peninsula, the northern Lower Peninsula, and the southern Lower Peninsula. MDEQ will review the data submitted to determine if TDS or TDS components (e.g., chloride or sulfate), or any of the monitored metals, are of a concern. In the evaluation of TDS, MDEQ will take into account the monitoring requirements and the assimilative capacity of the receiving water, in addition to the State of Michigan's water quality criterion. If it is determined that TDS, or any of the metals, are discharged at a concentration of concern, MDEQ will require an individual permit, as provided in Part I.A.5.a of the General Permit.

2. The U.S. EPA stated that the TMDL language was not inclusive enough because it only called out impairments related to TSS. MDEQ explained that TSS is the only pollutant of concern for this General Permit and if any other pollutant is present this General Permit would not be appropriate. For new facilities, MDEQ looks at the analytical data that is submitted and conducts an "Existing Use" review, from which the outcome determines if coverage under this General Permit or an individual permit is appropriate. For reissuances, before the Certificate of Coverage is issued an assessment of TMDLs is conducted. If a facility falls within a TMDL the appropriate decision is made to continue coverage under the General Permit or to move forward with an individual permit. The U.S. EPA found the process acceptable, but recommended revisions to the TMDL language that will require the permittee to do a Best Management Practice assessment. If the assessment finds the controls are not being met, then language should be included to make the controls more robust. Below is MDEQ's proposed language:

"If the permittee discharges to a water body with an applicable approved Total Maximum Daily Load (TMDL) where Total Suspended Solids (TSS) is the pollutant of concern, and if the TMDL assigns a TSS Waste Load Allocation to the permittee, the permittee shall assess whether the TMDL requirements are being met based on current practices or if additional control measures are necessary. If additional control measures are necessary to consistently meet the TSS wasteload allocation, the permittee shall implement such controls and reduce TSS loadings or concentrations to consistently meet the wasteload allocation. The applicable TMDL(s) will be identified in the COC issued under this permit."

MDEQ did not include a timeframe because if it is found that the facility is within a TMDL and cannot meet the WLA, then an individual permit will be required. MDEQ would like to reiterate that this review will be conducted during reissuance; therefore, the situation would not arise during the permit cycle. The "Note" suggested by U.S. EPA will be included in the checklist MDEQ uses to determine if coverage under the General Permit is appropriate.

3. The U.S. EPA found that the language in Part I.A.1.c., Outfall Observation, is not clear in its requirements regarding the response to the findings of "unusual characteristics" of the discharge. MDEQ agreed to clarify the language. The language added references the Part I.A.1.a – Narrative Standard and Part II.6.C. Noncompliance Notification, which corresponds to 40 CFR 122.41(l)(6) *Twenty-Four Hour Reporting*. This is consistent with the requirements for daily maximum effluent limitation violations.

"Outfall observation shall be reported as "yes" or "no." The permittee shall report "yes" if this requirement was completed and "no" if this requirement was not completed. Any unusual characteristics of the discharge (i.e.,

unnatural turbidity, color, oil film, floating solids, foams, settleable solids, suspended solids, or deposits), as defined in the Narrative Standard in Part I.A.1.a. of this General Permit, shall be reported within 24 hours to the Department, followed by a written report within five (5) days detailing the findings of the investigation and the steps taken to correct the condition, as specified in Part II.6.C. of this General Permit.”

MDEQ commented that this language is in all General Permits and individual permits; therefore, the change will be introduced as permits are issued.

MDEQ would like to thank you for the comments and opportunity to discuss them prior to the end of the Public Notice period on Monday, September 22, 2014.

Thank you,  
Maureen Nelson

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Maureen Nelson  
Lakes Michigan & Superior Permits Unit  
Water Resources Division  
Michigan Department of Environmental Quality  
Phone: 517-284-5598  
Fax: 517-241-9003

Enclosure B  
U.S. EPA Comments and Recommendations regarding the  
Draft NDPS General Permit for Discharges of Sand, Gravel, and Clay Mining Wastewater

1. Part 1, Section A, provision 1.a. Narrative Statement. This requirement is worded so that it applies to the receiving water, vs. the discharge. Also it seems to limit the prohibition to “unnatural quantities.” We suggest that this narrative standard needs to be worded something like the following:

The discharges shall not contain quantities of pollutants that are or may become injurious to any receiving water designated use, and shall not cause any of the following conditions in the receiving water: visible increase in turbidity, change to color, oil films, floating solids, foams, settleable solids, or deposits.

2. Part 1, Section A, provision 1.a. Outfall Observation. In earlier communications regarding this permit language EPA suggested that the wording be strengthened to make it more clear that the permittee is required to implement corrective actions if unusual conditions are noted in an outfall observation. EPA appreciates that MDEQ has committed to strengthening this language, including cross-referencing to Part I.A.1.a. of the General Permit and to Part II.C.6. (We note that second citation should probably be Part II.C.6.) However, EPA is of the view that while cross referencing to the Noncompliance Notification section of the permit is valuable, the proposed permit language still does not expressly require the permittee to implement corrective actions, it simply requires the permittee to report. EPA recommends wording something like the following:

“Outfall observation shall be reported as “yes” or “no.” The permittee shall report “yes” if this requirement was completed and “no” if this requirement was not completed. If any unusual characteristics of the discharge are identified in a visual observation (i.e., unnatural turbidity, color, oil film, floating solids, foams, settleable solids, suspended solids, or deposits), as defined in the Narrative Standard in Part I.A.1.a. of this General Permit, the permittee must investigate the source of the unusual characteristics in the discharge and implement actions to correct the condition. Any unusual characteristics of the discharge identified in a visual observation shall be reported within 24 hours to the Department, followed by a written report within five (5) days detailing the findings of the investigation and the steps taken as quickly as is feasible to correct the condition, as specified in Part II.C.6. of this General Permit.”

3. Part 1, Section A, provision 1.e.2) The wording in this sub-section would allow permittees who are dewatering through wells that are not contaminated to automatically reduce the monitoring frequency. This wording needs to be clarified to make it clear that the monitoring frequency for discharges *of the dewatering flows only* may be reduced if those flows are not intermingled with other wastewaters. This comment was discussed during the September 17, 2014 conference call and MDEQ identified a very good wording change to address this point.